

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Ronald G. Dierdorf,

Case No. 3:05CV7488

Plaintiff

v.

ORDER

Hancock County Sheriff's Dep't, et al.,

Defendant

This is a pro se prisoner civil rights case in which the plaintiff has moved for: 1) summary judgment on the basis of defendants' failure to answer his amended complaint; 2) summary judgment on the basis that there are no disputed issues of fact; 3) discovery; and 3) the Clerk to arrange for depositions of the individual defendants.

The motions for summary judgment shall be denied. The defendants are not in default, as plaintiff has not served them with a copy of his amended complaint and they have answered the original complaint. Plaintiffs' second motion for summary judgment is not well-taken, as he has failed to produce evidence to show that there is no dispute of material fact. Fed. R. Civ. P. 56.

The motions for discovery shall be denied pending the filing and adjudication of a motion by defendants either to dismiss or for judgment on the pleadings. Leave shall be granted *sua sponte* to the defendants to file such motion.

Defendants previously were given a deadline in which to file such motion. That deadline has long since past without action by the defendants. But because plaintiff has since filed an amended complaint, defendants shall be given an opportunity to file a motion under Rule 12 of the Federal Rules of Civil Procedure.

If the defendants do not file such motion within the time specified herein, the Clerk shall schedule a telephone scheduling conference and arrange for plaintiff to participate from the institution in which he may then be confined.

It is, therefore

ORDERED THAT:

1. Plaintiff to serve a copy of his amended complaint by February 9, 2007, on the defendants by sending same to their counsel of record; if no such copy is received by defendants' attorney, plaintiff's amended complaint shall, on filing of an affidavit to that effect by defendants' attorney by February 15, 2007, be dismissed for want of prosecution;
2. If plaintiff serves a copy of his amended complaint as required herein, defendants to file a motion to dismiss or motion for judgment on the pleadings by February 28, 2007; plaintiff to file his opposition by April 2, 2007; defendants' reply due April 15, 2007; failure by plaintiff to file his opposition as required herein shall cause his complaint to be dismissed with prejudice for want of prosecution;
3. Plaintiffs' motions for summary judgment denied;
4. Plaintiffs motions re. discovery denied; discovery held in abeyance pending filing and adjudication of motion to dismiss of for judgment on the pleadings.

So ordered.

s/James G. Carr
James G. Carr
Chief Judge